

STATEMENT OF CONSIDERATION RELATING TO

405 KAR 10:015

Energy and Environment Cabinet

Division of Mine Permits

(Not Amended After Comments)

405 KAR 10:001

(Amended After Comments)

- I.** The public hearing on 405 KAR 10:001 and 405 KAR 10:015, scheduled for April 24, 2019, at 5:00 p.m. at the Energy and Environment Cabinet's Training Room C was held but no comments were received at the hearing; however, written comments were received during the public comment period ending on April 30, 2019.

- II.** The following person submitted written comments:

Name and Title

Peter Morgan, Senior Attorney

Agency/Organization/Entity, Other

Sierra Club Environmental Law Program

- III.** The following person from the promulgating administrative body responded to the written comments:

Name and Title

John Small, Commissioner

George Seay, Deputy Commissioner

Michael Mullins, Env. Sci. Cons. Sr.

Jeff Baird, Director

Jeff Harmon, Deputy General Counsel

Agency/Organization/Entity, Other

Department for Natural Resources

Department for Natural Resources

Department for Natural Resources

Division of Mine Permits

Office of General Counsel

IV. Summary of Comments and Responses
405 KAR10:001 and 405 KAR 10:015

405 KAR 10:001

(1) Subject Matter: Long Term Treatment Definition

(a) Comment: Peter Morgan, Sierra Club Environmental Law Program

The proposed regulatory changes include the addition of a new definition for “long-term treatment” at 405 KAR 10:001(26): “‘Long term treatment’ means the use of any active or passive water treatment necessary to meet water quality effluent standards, but does not include Total Suspended Solids or Total Dissolved Solids, at the time a permit or any affected permit increment attains phase 1 bond release standards as determined by the cabinet pursuant to 405 KAR 10:040.” Because that definition expressly excludes two forms of water pollution associated with surface coal mining – total dissolved solids and total suspended solids – it conflicts with the federal SMCRA program and may not be approved.

- (b) Response:** The department understands the comment offered by the Sierra Club and has amended the definition to remove the exclusionary language.

405 KAR 10:015

(1) Subject Matter: Calculation for the Amount of Long-term Treatment Bond

(a) Comment: Peter Morgan, Sierra Club Environmental Law Program

Kentucky’s proposed amendments would increase the time period used to calculate the amount of the financial assurance instrument from twenty years to twenty-five years. Twenty-five years remains too short of a time period to ensure that there will be adequate funds available to address long-term pollution treatment.

- (b) Response:** The department does not agree with this comment. The calculation previously used included a 20-year multiplier. However, this amendment does not use a 25 year multiplier as indicated in the comment. The new language that was inserted in place of “20 years” is “a factor of 25”. The removal of the term “year” addresses the Office of Surface Mining Reclamation and Enforcement’s concern that the use of the term “year” indicated the bond was time limited and did not address the concept of treatment in perpetuity. It should also be noted that Section 10 of 405 KAR 10:015 authorizes the cabinet to adjust the amount of a bond if acreage in the permit area or increment is either increased or decreased or the cabinet determines that the cost of future reclamation, restoration, or abatement work has changed. This allows the Cabinet to reassess the long-term treatment bond at any time when conditions change to ensure sufficient funds are available to pay for treatment to ensure protection of water quality. The department will not amend the administrative regulation in response to this comment.

**V. Summary of Statement of Consideration and Action Taken by Promulgating
Administrative Body**

405 KAR 10:001. Definitions for 405 KAR Chapter 10. Comments were considered and the following changes are suggested:

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Section 1(26)

Lines 2 and 3

After “effluent standards”, delete the following:

, but does not include Total Suspended Solids or Total Dissolved Solids,

Page 6

Section 1(26)

Line 3

After “attains phase”, insert “one (1)”

Delete “1”